

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
Petition of ACS of Anchorage, Inc.)	WT Docket No. 05-281
Pursuant to Section 10 of the)	
Communications Act of 1934, as amended,)	
for Forbearance from Sections 251(c)(3))	
and 252(d)(1) in the Anchorage LEC)	
Study Area)	

To: The Commission

MOTION TO MODIFY PROTECTIVE ORDER

Affinity Telecom, Inc., Alpheus Communications, LP., Cavalier Telephone, LLC, CP Telecom, Inc., McLeodUSA Telecommunications Services, Inc., Integra Telecom, Inc., and TDS Metrocom, LLC ("Movants"), through counsel and pursuant to Section 1.45 of the Commission's Rules,¹ hereby request that the Commission modify the *ACS Protective Order* adopted in the above-captioned proceeding² to allow the confidential information submitted in this proceeding to be used by authorized parties, subject to the Protective Order(s) adopted in other Commission proceedings, to analyze and respond to market-specific data contained in other petitions for forbearance filed under 47 U.S.C. § 160.³ As discussed below, modification of the *ACS Protec-*

¹ 47 C.F.R. § 1.45.

² See *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, Protective Order, 20 FCC Rcd 16310 (2005) ("*ACS Protective Order*").

³ A group of competitive local exchange carriers has a pending motion in WC Docket No. 04-223 that seeks similar relief regarding the Commission's Protective Order adopted in the Qwest Omaha Proceeding. See *Motion of Broadview Networks, Inc., Covad Communications Group, NuVox Communications, Inc., and XO Communications Inc. to Modify Protective Order*, WC Docket No. 04-223 (filed October 13, 2006).

tive Order is necessary to allow authorized parties to properly assess whether the market-specific data submitted in forbearance petitions filed under 47 U.S.C. § 160 satisfies the statutory forbearance requirements. The relief requested by Movants would allow them and other interested parties to respond more fully to claims made by parties in other forbearance proceedings, while continuing to protect the confidentiality of information submitted to the Commission in this proceeding from general public disclosure.

DISCUSSION

In 2005, the Commission granted in part Qwest Corporation's ("Qwest") Petition for Forbearance seeking relief from statutory and regulatory obligations that applied to it as the incumbent telephone company in the Omaha Metropolitan Statistical Area ("MSA").⁴ In granting Qwest's Petition, the Commission relieved Qwest of certain legacy monopoly regulations because of particular market characteristics of the Omaha MSA.

In granting ACS of Anchorage Inc.'s ("ACS") Petition for Forbearance in 2007, the Commission, relying on the precedent established in the *Qwest Omaha Order*, adopted a decision "similar in most respects to the decision the Commission reached in the *Qwest Omaha Order*."⁵ Most notably, the Commission applied the "same analytic framework to [its] analysis of

⁴ See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Qwest Omaha Order*").

⁵ See *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958, 1963-64 (2006) ("*ACS Anchorage Order*"). ACS was granted forbearance from certain unbundling obligations of Section 251(c)(3) as they apply to the Anchorage, Alaska study area and from the application of the Section 252(d)(1) pricing standard for unbundled network elements ("UNEs") to the extent ACS continues to offer UNEs in Anchorage.

the level of competition in the Anchorage study area in this proceeding that the Commission applied to its analysis of competition in the Omaha MSA.”⁶

As in the *Qwest Omaha Order*, the confidential information supporting the Commission’s forbearance determinations was largely redacted from the *ACS Anchorage Order*, and therefore not made available for public inspection. Moreover, even to the extent that interested parties were to obtain, subject to the terms and conditions of the *ACS Protective Order*, full disclosure of the *ACS Anchorage Order*, the *ACS Protective Order* expressly precludes the use of confidential information in other proceedings before the Commission.⁷

This preclusion significantly impairs the ability of interested parties to fully review, analyze, and respond to market-specific data submitted in forbearance petitions under 47 U.S.C. § 160. Without grant of the instant request, interested parties will be unable to rely on market definitions and local competition benchmarks utilized by the Commission in the *ACS Anchorage Order* to determine whether a pending forbearance request would be warranted in a particular market. This information provides a benchmark against which claims made by forbearance petitioners may be measured. Without this modification, interested parties would be foreclosed from accessing the confidential information relied on by the Commission in the *ACS Anchorage Order*, and will not be able to properly assess whether the market-specific data submitted in a forbearance request satisfies the statutory forbearance requirements.

Further, Movants submit that the *ACS Protective Order* can be modified in a way that addresses this concern without jeopardizing parties’ commercial interest in confidentiality that led to the entry of the *ACS Protective Order* initially. Specifically, parties seeking to use any confi-

⁶ *Id.* Furthermore, ACS sought the same Section 251(c)(3) forbearance relief granted to Qwest, and ACS cited to the *Qwest Omaha Order* as support in seeking relief.

⁷ See *ACS Protective Order*, 20 FCC Rcd at 15310-13.

dential information filed in this docket for purposes of another Commission proceeding should be permitted to do so *only* if: (a) the Commission has adopted a Protective Order in that other proceeding that provides substantially similar protection to confidential information as the *ACS Protective Order* does; (b) the party seeking to use the confidential information has complied with all requirements of the protective order in the other proceeding, including the filing of any required acknowledgement(s) or agreement(s); and (c) the party seeking to use the confidential information expressly agrees that the confidential information subject to the *ACS Protective Order* will be treated as confidential for purposes of the other Protective Order as well.

Additionally, the provision of the *ACS Protective Order* requiring parties that have received confidential documents to either destroy, or return all copies to the party that submitted the document, must be modified to implement the modifications set forth in paragraph 6, *supra*.⁸ Therefore, the *ACS Protective Order* should be modified to allow parties to retain confidential documents obtained in this proceeding for purposes of participation in other proceedings concerning forbearance petitions filed under 47 U.S.C. § 160. The *ACS Protective Order* should also be modified to require all parties seeking to use and retain confidential documents obtained in this proceeding in other Commission forbearance proceedings under 47 U.S.C. § 160, to certify in writing that he/she has read and understands the *ACS Protective Order* as modified as requested in this Motion, agrees to abide by its terms, and understands that unauthorized disclosure of confidential documents is prohibited.

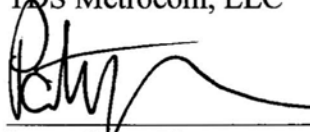
⁸ See *ACS Protective Order*, 20 FCC Rcd at 16312.

CONCLUSION

For the reasons stated above, Movants request that the Commission modify the *ACS Protective Order* issued in the above-captioned proceeding as necessary to permit the use of confidential information by authorized parties for purposes of analyzing and responding to forbearance petitions filed under 47 U.S.C. § 160.⁹

Respectfully submitted,

Affinity Telecom, Inc.
Alpheus Communications, LP
Cavalier Telephone, LLC
CP Telecom, Inc.
McLeodUSA Telecommunications
Services, Inc.
Integra Telecom, Inc.
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July 9, 2007

⁹ Attached to the instant Motion is a draft of a proposed Order that sets forth the modifications to the *ACS Protective Order*.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of ACS of Anchorage, Inc. Pursuant to)	WT Docket No. 05-281
Section 10 of the Communications Act of)	
1934, as amended, for Forbearance from)	
Sections 251(c)(3) and 252(d)(1) in the)	
Anchorage LEC Study Area		

ORDER

Adopted:

Released:

By the Commission:

I. INTRODUCTION

1. In this *Order*, we modify the *Protective Order*¹ adopted in the above-captioned proceeding² to the extent of permitting limited use of confidential information submitted in this proceeding in other proceedings addressing petitions for forbearance filed pursuant to 47 U.S.C. § 160.

II. BACKGROUND

2. In the *Protective Order*, the Commission provided that persons obtaining access to confidential documents "shall use the information only in the conduct of this proceeding and any judicial proceeding arising there from, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings."

3. On December 28, 2006, the Commission granted ACS of Anchorage, Inc. ("ACS") relief from Section 251(c)(3) unbundling and Section 252(d)(1) pricing obligations in 5 of the 11 wire centers in the Anchorage, Alaska study area based on record evidence particular to the Anchorage study area.³ Confidential information supporting the Commission's forbearance determinations was redacted from the *ACS Anchorage Order*, and therefore not made available for public inspection.

4. On July 9, 2007 Affinity Telecom, Inc., Alpheus Communications, LP., Cavalier Telephone, LLC, CP Telecom, Inc., McLeodUSA Telecommunications Services, Inc., and Integra Telecom, Inc. filed a "Motion to Modify *Protective Order*" to permit the use of confidential information by author-

¹ See *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, Protective Order, 20 FCC Rcd 16310 (2005) ("*Protective Order*").

² *Id.* at 16311-12.

³ *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 1958 (2006) ("*ACS Anchorage Order*").

ized parties for purposes of analyzing and responding to other forbearance petitions filed under 47 U.S.C. § 160.⁴ They stated that modification is “necessary to allow authorized parties to properly assess whether the market-specific data submitted in forbearance petitions filed under 47 U.S.C. § 160 satisfies the statutory forbearance requirements ... while continuing to protect the confidentiality of information submitted to the Commission in this proceeding from general public disclosure.”⁵

III. DISCUSSION

5. The requested modification would provide for effective and complete participation by interested parties, while preserving the confidentiality of information submitted to the Commission. Information such as market definitions and local competition benchmarks utilized by the Commission in determining whether to grant the forbearance petition filed by ACS in this proceeding may provide an analytic framework against which claims made by petitioners in other forbearance proceedings may be measured.

6. To maintain parties’ commercial interest in confidentiality that initially led to the adoption of the *Protective Order*, we adopt the following safeguards. Parties seeking to use any confidential information filed in this docket for purposes of another Commission proceeding relating to a petition under 47 U.S.C. § 160 should be permitted to do so *only* if: (a) the Commission has adopted a Protective Order in that other proceeding that provides substantially similar protection to confidential information as the *ACS Protective Order* does; (b) the party seeking to use the confidential information has complied with all requirements of the protective order in the other proceeding, including the filing of any required acknowledgment(s) or agreement(s); and (c) the party seeking to use the confidential information expressly agrees that the confidential information subject to the *ACS Protective Order* will be treated as confidential for purposes of the other Protective Order as well.⁶

7. Additionally, the provision of the *ACS Protective Order* requiring parties that have received stamped confidential documents to either destroy or return all copies to the party that submitted the document is modified to implement the modifications set forth in paragraph 6, *supra*.⁷ Parties who have signed the certification described below may retain confidential documents obtained in this proceeding for the purpose of participation in other forbearance petitions filed under 47 U.S.C. § 160. The *ACS Protective Order* is also modified to require all parties seeking to retain confidential documents obtained in this proceeding and to use them in other Commission forbearance proceedings under 47 U.S.C. § 160, to certify in writing that he/she has read and understands this *Order*, agrees to abide by the terms set forth in this *Order* and the in *ACS Protective Order*, and understands that unauthorized disclosure of confidential documents is prohibited. A copy of each such certification shall be provided to the party that designated the information confidential. Otherwise, all parties that have received stamped confidential documents in this proceeding shall either return all copies of such documents in their possession to the party that submitted the documents, or destroy all such confidential documents.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that the *Protective Order* issued in the above-captioned proceeding IS MODIFIED to allow the use of confidential information submitted in this proceeding by

⁴ See Motion of Affinity Telecom, Inc., Alpheus Communications, LP., Cavalier Telephone, LLC, CP Telecom, Inc., McLeodUSA Telecommunications Services, Inc., Integra Telecom, Inc., and TDS Metrocom, LLC to Modify Protective Order, WT Docket No. 05-281 (filed July 9, 2007) (“Motion”).

⁵ *Id.* at 2.

⁶ *Id.* at 4.

⁷ See *ACS Protective Order*, 20 FCC Rcd at 16312.

authorized parties, subject to the conditions set forth in paragraphs 6 and 7 of this *Order*, to analyze and respond to market-specific data contained in other petitions for forbearance filed under 47 U.S.C. § 160.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary